

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

**2101 LLC D/B/A INTERCONTINENTAL TRUCK
BODY**

Employer

and

Case 19-RC-258144

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
LODGE 88, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

The petition in this matter was filed by International Association of Machinists and Aerospace Workers, Lodge 88, AFL-CIO (Petitioner) on March 17, 2020,¹ under Section 9(c) of the National Labor Relations Act, as amended (Act), seeking an election to represent a unit of production and maintenance employees employed by 2101 LLC d/b/a Intercontinental Truck Body (the Employer) at its manufacturing facility located in Anaconda, Montana (Employer's facility). There are approximately 18 employees in the unit sought.

On March 18, Region 19 (the Region or Region 19) of the National Labor Relations Board (the Board) served the petition on the parties and issued a Notice of Hearing in this matter. On April 8, the Region issued an Order Rescheduling the Hearing to May 27. On April 27, the Region issued an Order further Rescheduling the Hearing from May 27 to May 14.

On May 13, both parties executed a Stipulation of Record for Pre-Election Hearing (Stipulation), agreeing that they are not in dispute about any other issues and that the sole issue precluding them from reaching a stipulated election agreement in this case is the manner of election, specifically, whether the election should be conducted by manual election or by mail ballot election, and the date(s) of the election. The parties also agreed that their Stipulation, its exhibits, and each party's position statements regarding the manner of the election due on May 15 constitutes the entire record for this matter (stipulated record) and that I will make a determination solely on the basis of the parties' stipulated record. Further, the parties agreed in their Stipulation that they retain the right to file, **limited to the method, date, time, and place of election ordered**, a request for review of my decision with the Board. (emphasis in original) Additionally, the parties agreed in their Stipulation that if I order a mail ballot election, and if I set a due date for returning ballots different than the date of the ballot count, the parties understand that no ballot will be counted that Region 19 receives after the due date I established.

¹ All dates hereafter are in 2020 unless otherwise indicated.

The parties further waived their right to file objections based upon any untimely received ballots.

Based on the parties' Stipulation and the stipulated record, the only issue I must determine is the manner of the election, whether to conduct a manual election or a mail ballot election given the reality of the COVID-19 pandemic.

II. FACTUAL OVERVIEW AND POSITIONS OF THE PARTIES

A. The COVID-19 Pandemic

The impact of the COVID-19 pandemic on daily life has been profound. As of May 18, 1,480,349 people in the United States have been infected with COVID-19 and 89,407 people have died from it.² The Centers for Disease Control and Prevention (CDC) has determined that the best way to prevent the illness is to avoid being exposed to the virus. *How to Protect Yourself and Others*.³ Many of the measures recommended by CDC to prevent the spread of the virus are well-known at this point: maintain a 6-foot distance between individuals, work or engage in schooling from home, avoid social gatherings, avoid discretionary travel, and practice good hygiene. *Id.*

The CDC and the Occupational Safety and Health Administration have also recently issued specific interim guidance for the manufacturing industry, *Manufacturing Workers and Employers* (Interim Guidance).⁴ This Interim Guidance states that the virus is thought to spread mainly from person to person:

- Between people who are in close contact with one another (within about 6 feet, which is about two meters); and
- Through respiratory droplets produced when an infected person coughs, sneezes, or talks.

According to the Interim Guidance, recent studies indicate that people who are not showing symptoms can spread the virus, and it may also be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. The Interim Guidance notes that this is not thought to be the main way the virus spreads, but acknowledges that we are still learning more about this virus.

With respect to the exposure to COVID-19 among manufacturing workers specifically, the Interim Guidance underscores that the manufacturing work environment—production or assembly lines and other areas in busy plants where workers have close contact with coworkers and supervisors—may contribute substantially to workers' potential exposures. The Interim Guidance notes distinctive factors affecting manufacturing workers' risk for exposure to COVID-19 including:

² See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

³ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-manufacturing-workers-employers.html>.

- **Distance between workers** – Manufacturing workers often work close to one another on production or assembly lines. Workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker/changing rooms.
- **Duration of contact** – Manufacturing workers often have prolonged closeness to coworkers (e.g., for 8–12 hours per shift). Continued contact with potentially infectious individuals increases the risk of COVID-19 transmission.
- **Type of contact** – Manufacturing workers may be exposed to the infectious virus through respiratory droplets in the air—for example, when workers in a plant who have the virus cough or sneeze. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances/exits to the facility may contribute to their risk.

The Interim Guidance suggests certain administrative controls employers should implement to promote social distancing, including the following: limiting facility access only to essential workers; if meetings must be held, such as at shift changes, breaking them into smaller groups instead of holding a larger meeting, and eliminating non-essential meetings; employees maintaining at least 6 feet of distance from others at all times, including on breaks; and providing visual cues (e.g., floor markings, signs) as a reminder to workers to maintain social distancing. Other Interim Guidance recommendations to limit exposure and transmission of COVID-19 include: cohorting (grouping together) employees to reduce the spread of COVID-19 in the workplace by minimizing the number of different individuals who come into close contact with each other, potentially reducing the number of workers outside of the cohort exposure to the virus; and educating employees to avoid touching their faces, including their eyes, noses, and mouths, particularly until after they have thoroughly washed their hands upon completing work and/or removing personal protective equipment (PPE).

Further, although not directly addressing Board elections, I note that the CDC has specifically issued guidance on elections, *Recommendations for Election Polling Locations*⁵ (CDC Election Guidance), stating that officials should encourage mail-in voting. This CDC guidance provides as follows:

Actions for elections officials in advance of election day

Encourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.

- Encourage mail-in methods of voting if allowed in the jurisdiction.

In addition, many state and local governments have issued restrictions tailored to the situation in specific communities. On April 22, Montana Governor Steve Bullock (Governor)

⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

issued a Directive providing guidance for the phased reopening of Montana (Directive).⁶ This Directive extends the March 30 mandatory quarantine for non-business travelers from out of state through the end of the emergency, requiring non-business travelers to quarantine for 14 days or for the duration of their visit – whichever is shorter. However, out-of-state travel to Montana for work-related reasons is exempt from this mandatory quarantine.

The Directive establishes three phases, explaining that the duration of each phase will be regularly evaluated in close consultation with public health and emergency management professionals. Factors considered in moving from one phase to the next include the ability for public health professionals to monitor new cases adequately and conduct contact tracing. Hospitals must maintain the ability to treat all patients safely, both COVID-19 patients and those with other health conditions. Montana must maintain its ability to screen and test all people with COVID-19 symptoms and maintain sufficient levels of PPE. The Directive emphasizes that negative indicators in these areas may result in the need to re-implement certain restrictions or take other protective measures.

There are certain requirements for employers that apply to all three phases, including developing and implement appropriate policies, in accordance with Federal, state, and local regulations and guidance, and informed by industry best practices, regarding: social distancing and PPE; temperature checks and/or symptom screening; testing, isolating, and contact tracing, in collaboration with public health authorities; sanitation; using and disinfecting common and high-traffic areas; monitoring the workforce for indicative symptoms and not allowing people with symptoms of COVID-19 to work; and collaborating with public health officials when implementing policies and procedures for workforce contact tracing following an employee's COVID-19 positive test result.

During Phase One, which is currently in effect, individuals should avoid gathering in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing. Phase One guidance for employers includes: allowing employees to telework, and if telework is not feasible, accommodating alternative work schedules such as shift work and staggered scheduling in order to adhere to social distancing guidelines; closing common areas where personnel are likely to congregate and interact, or enforce strict social distancing protocols; and minimizing non-essential business travel.

Although communities nationwide have taken steps to prevent or slow the spread of COVID-19, the virus has continued to have a devastating impact in Montana and throughout the United States. As of May 18, the Montana State Library (Library) reports that in Montana, there have been 470 confirmed cases of COVID-19, 20 active cases of COVID-19, and 16 deaths from COVID-19.⁷ At the local level, the Employer's facility is in Anaconda, Montana, located in Deer Lodge County. According to the Library, as of May 18, there were 3 confirmed cases of COVID-19 in Deer Lodge County. *Id.* The Library does not contain any data indicating whether

⁶ See <https://covid19.mt.gov/>.

⁷ See <https://montana.maps.arcgis.com/apps/MapSeries/index.html?appid=7c34f3412536439491adcc2103421d4b>.

any Deer Lodge County residents have died from COVID-19, but according to local news reports, there have been no COVID-19 deaths in Deer Lodge County.⁸

B. The Employer's Ongoing Operations

The Employer has continued operating its manufacturing facility, providing essential military and commercial transportation equipment, including aluminum grain hauling equipment, platforms, shelters, C-130 aircraft loading ramps (ramps), and steel flight line tow vehicles (tow trucks). The Employer's facility receives raw materials such as aluminum, Ford F350 trucks, or customer supplied commercial vehicles and pre-cut steel plates to convert vehicles. According to the Employer, its ramps are formed, drilled, riveted, painted, and shipped based on the required specifications. To create military tow trucks, Ford F350 Trucks are shortened in length; new steel bodies are formed, welded, painted, and installed; and new lighting, wiring, and hitches are installed. Further, the Employer modifies commercial trucks by assembling aluminum beds, making boxes for the truck bed, and converting the bed by adding lights and wiring and performing other modifications. According to the Employer, since it has remained operational for the duration of the COVID-19 pandemic, with its employees working at the Employer's facility, maintaining excellent attendance, the Employer and its employees are knowledgeable and experienced in COVID-19 social distancing and hygiene best practices.

III. POSITION OF THE PARTIES

A. Petitioner's Position – Mail Ballot Election is Necessary due to COVID-19

Petitioner maintains that a mail ballot election is necessary because of the extraordinary circumstances of the current COVID-19 pandemic and its associated restrictions. The Petitioner notes that Regional Directors have wide discretion in determining the place, time, and manner of election, and the Board has already denied a request for review of a Regional Director exercising her discretion to order a mail ballot to protect voters, party representatives, and Board agents.⁹ Petitioner highlights that Montana's phased re-opening requires that significant precautions still be taken and pays particular attention to those traveling to Montana from out of state, including a Board agent who would either be traveling from Seattle or Spokane in Washington State or from Portland, Oregon. With respect to such out-of-state travel to Montana, I note that Petitioner's counsel's office is located in Alameda, California, and the Employer's counsel's office is located in Houston, Texas.

Petitioner requests that I exercise my discretion to direct a mail ballot election at the earliest practicable date – 10 days after the issuance of this decision. To accommodate this request to have the election as early as possible, Petitioner agreed to waive three days of the 10 days it is entitled to have the voter list prior to the election, agreeing to have the list for a total of seven days.

⁸ See, e.g. <https://www.kpax.com/news/coronavirus/no-new-covid-19-cases-reported-in-montana-sunday-may-17>.

⁹ See *Atlas Pacific Engineering Company*, 7-RC-258742 (Order Denying Request for Review, May 8, 2020).

With respect to the risks associated with holding a manual election during the COVID-19 pandemic, Petitioner notes that a manual election would require at least 18 interactions between voters, two observers, and the Board agent. Further, a voter list is shared between the two observers and the Board agent, with observers less than a foot apart when they check off voters. According to Petitioner, the Employer's suggested precautions to reduce such risks during a manual election are insufficient and add additional obstacles to its employees voting in the election. In conclusion, although all parties would generally advocate for a manual election under normal circumstances, the Petitioner notes that the uncertainties present make a mail ballot election the only means by which I can ensure that the Employer's employees have the ability to exercise their rights under the Act in a timely and safe manner.

B. Employer's Position – Manual Election at the Employer's Facility

The Employer argues that the election should be conducted entirely by a manual election, based on the Board's longstanding policy favoring manual elections. According to the Employer, a manual election can be safely conducted at the Employer's facility and would result in a much quicker ballot count than a mail ballot election. The Employer proposes holding a manual election at the Employer's facility from 1:30 p.m. to 2:30 p.m. on Friday, June 5.

According to the Employer, since there are only approximately 18 employees in the petitioned-for unit, voting could be completed in less than an hour, utilizing strict social distancing and hygiene protocols. To observe social distancing and hygiene guidelines advised by the CDC, the voting room could be thoroughly deep cleaned and disinfected immediately prior to the commencement of voting using a 60% or greater alcohol solution. Eligible voters could remain at their workstations while waiting to vote until the prior voter exits the voting area, or alternatively, wait in a line, standing more than six feet from one another, indicated by floor markings. Eligible voters could check their temperature prior to casting their ballot. I note that the Employer's proposal does not specify how such temperature checks would take place, including ensuring that the thermometer is sanitized between each use and that the temperature reading is accurate. The Employer proposes a voting area at its facility, in an unidentified area on its shop floor of an approximate 40 feet by 40 feet size, cordoned off for privacy by welding curtains, which would purportedly be large enough to allow for the two observers, the Board agent, and the voter present to remain more than six feet apart for the entire voting period.

The Employer further proposes that the equipment necessary to run Board manual elections such as a voting booth, a ballot box, a voter list, and ballots, could be packaged in plastic bags and isolated from contact with Board personnel for several days or a week prior to the Board agent conducting the election transporting the materials to the Employer's facility. According to the Employer, the necessary distribution of election equipment materials, such as election instructions for observers and badges for observers, could be done through the Board agent placing such materials on each observer's separate table while the observers are not present.

Further, the Employer suggests that each observer could have his or her own voter list to allow for necessary social distancing, and each observer could check off voters on different sides

of the voters' names using different colored pens or pencils. The Employer proposes that the Board agent have a separate table, and the voting booth could be at least six feet away from the Board agent's table and both observers' tables. The Employer further indicates that a taped off path and signage could indicate the route to indicate how voters should proceed into the voting area to the observer checking tables, then to the voting booth, and then out of the voting area, all while remaining six feet away from the observers and Board agent. Additionally, the Employer offers to place clear plastic screens in front of both observers' tables and the Board agent's table as an extra safety measure.

The Employer proposes that each voter would enter the voting area one at a time. The voter could then stand at a designated floor marking, state his or her name, the observers could check that voter off the list, the Board agent could place a ballot on the table for the voter to retrieve after the Board agent has backed away from his or her table at a distance of at least six feet, the voter could retrieve the ballot off of the table, proceed to the voting booth, and place the ballot in the ballot box. Spoiled ballots could be handled in this same manner, by the voter placing the spoiled ballot on the Board agent's table, the Board agent retrieving the ballot, inspecting it, placing a clean ballot on the table, the voter retrieving the clean ballot, after the Board agent has backed at least six feet away from the table, and the voter could then proceed again to the voting booth and then the ballot box. The closing of the polls and all signing and certifying of documents by the Board agent and the parties could be completed consecutively, rather than concurrently, while following social distancing protocols.

As for the challenged ballot procedure, the Employer proposes that the Board agent fill out the appropriate information on the challenged ballot envelope at the Board agent's table. While the voter remains in the voting booth, the Board agent could place the challenge envelope on the voting table for the voter to retrieve. Once the Board agent returns to his or her table, the voter could exit the voting booth, display his or her folded ballot, place the ballot in the challenged ballot envelope, seal the envelope, and place the envelope in the ballot box. According to the Employer, the small size of the petitioned-for unit and the parties' Stipulation to the unit composition mean the likelihood of any challenged ballots is slim.

Finally, the Employer proposes that it would provide hand sanitizer for the observers and Board agent at their respective tables. The Employer would also provide all participants, including the Board agent, both observers, and all voters, gloves and N95 masks to wear throughout the manual election. Voters would sanitize their hands immediately before and after casting their ballots. Each voter would use his or her own pencil or pen to fill out the ballot or, alternatively, any commonly used pen or pencil could be sanitized after each use. Each voter could wipe down the voting booth surfaces with a disinfectant wipe prior to departing. Due to the small size of the petitioned-for unit and the familiarity between eligible voters, any lowering of masks for identification purposes would be unnecessary.

With respect to a mail ballot election, the Employer argues that a mail ballot election could disenfranchise voters and result in low voter participation due to the unreliability of the mail, mail service delays, and delays associated with the Regional office's receipt of mail ballots since all Board staff are currently teleworking. The Employer also notes that the Employer's

facility, located in Deer County, Montana, a county with zero active COVID-19 cases, in a state with a total of 20 active COVID-19 cases, does not present extraordinary circumstances warranting a mail ballot election.

IV. ANALYSIS

The Board is charged, under Section 9 of the Act, with the duty to conduct secret ballot elections to determine employees' union representation preference and to certify the results of such elections. The Board's obligation to perform the function of conducting secret ballot elections must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. I also am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due consideration to safety considerations in the context of a pandemic.¹⁰ Thus, it is my obligation to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.¹¹

Although the Board prefers to conduct manual elections over conducting mail ballot elections, the Board has made it clear that mail ballot elections need not be reserved only for the most extraordinary circumstances, reasoning that "neither our precedent nor common sense supports such a stringent approach to the use of mail ballots." *Sutter Bay West Hospitals*, 357 NLRB 197, 198 (2011). Indeed, the Board has always acknowledged that circumstance may necessitate adaptations on the Board's part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that "circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions." 120 NLRB at 1346, citing *Shipowners' Association of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, "[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted." *Id.*

The Board has determined that there are some instances in which a mail ballot election is appropriate because "of circumstances that would tend to make it difficult for eligible employees to vote in a manual election." *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). The Board has clarified that Regional Directors should consider, at a minimum, where employees are located geographically, if employees are temporarily scattered, whether there is an ongoing strike, lockout, or picketing, and the ability of voters to read and understand a mail ballot. *Id.* at 1145. The Board went on to say that there may be other relevant factors to consider and that extraordinary circumstances may warrant a departure from the specific guidelines articulated in that case. *Id.*

¹⁰ In its April 17th press release, the Board stated that Regional Directors have discretion with respect to when, where and if an election can be conducted in accordance with existing Board precedent and the Board specifically noted that Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state, and local laws and guidance. See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

¹¹ See *Atlas Pacific Engineering Company*, 7-RC-258742 (Order Denying Request for Review, May 8, 2020).

I acknowledge that absent public health concerns, I would not order a mail ballot election in this case. However, for the reasons articulated earlier, this election will not be held under normal circumstances. As noted above, current Federal and state public health guidance strongly recommends discouraging gatherings and minimizing non-essential business travel, and a mail ballot election minimizes such risk. As noted above, despite the fact that Deer Lodge County has so far been fortunate to have only three confirmed cases of COVID-19 and zero deaths from COVID-19, a manual election at the Employer's facility in Anaconda, Montana, at a minimum, would require a Board agent to travel from Spokane¹² or Seattle¹³ in Washington State, or from Portland, Oregon,¹⁴ and could also involve the travel of Petitioner's counsel from Alameda, California¹⁵ and the Employer's counsel from Houston, Texas,¹⁶ where, in all of these areas, the COVID-19 statistics are far more grim than in Montana. The Employer's employees remain working at the Employer's facility because they provide essential services to their military and commercial customers, and because of the nature of their manufacturing and fabrication work, no alternative exists to perform their work remotely. However, the Board does have an alternative to conducting a manual election.

I find that the COVID-19 pandemic presents an extraordinary circumstance that makes conducting a mail ballot election the most responsible and appropriate method for conducting a secret ballot election to determine the unit employees' union representation preferences at this time. The safety of the voters, the observers, the out-of-state party representatives, and the out-of-state Board agent conducting the election must be considered in determining the appropriate method for conducting the election.

Although the Employer has offered certain accommodations in an effort to allow for some degree of social distancing and protection during the election, manual election procedures inherently require substantial interaction. Voters, observers, and party representatives would all need to appear at the Employer's facility to participate in the election. Party representatives, the observers, and the Board agent would have to gather for approximately 15 to 30 minutes for the pre-election conference, including the check of the voter list and the parties' inspection of the voting area. The Board agent and observers would need to share a voting area indoors, of approximately 40 feet by 40 feet, enclosed merely by welding curtains, for the duration of the proposed manual election spanning an hour. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent. The Board agent must provide a ballot to each voter, which each voter must then mark in a voting booth and then place into one shared ballot box. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. The Board agent and observers might need to use a restroom at the Employer's facility, perhaps before and after the closing of the polls. The Board agent must also count the ballots cast by all voters at the end of the election, typically held in the

¹² See <https://srhd.org/covid19cases>.

¹³ See <https://www.doh.wa.gov/emergencies/coronavirus>.

¹⁴ See <https://govstatus.egov.com/OR-OHA-COVID-19>.

¹⁵ See <https://ac-hcsa.maps.arcgis.com/apps/opsdashboard/index.html#/1e0ac4385cbe4cc1bffe2cf7f8e7f0d9>.

¹⁶ See <https://harriscounty.maps.arcgis.com/apps/opsdashboard/index.html#/c0de71f8ea484b85bb5efcb7c07c6914>.

same voting area, with the observers, party representatives, and other employees who wish to attend.

In these circumstances, the substantial interaction inherent in conducting a manual election presents a significant risk for all election participants despite the social distancing and protective measures proposed by the Employer. Although the Employer directs that employees abide by certain protective measures while at work, it cannot police employees' adherence to those measures in the polling area and the Board agent cannot also police employees' adherence to those measures at the locations outside the voting area. Despite the Employer's apparent precautions to minimize the transmission and spread of COVID-19 at the Employer's facility, any election participant could be an asymptomatic carrier of the virus.

Further, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line that would not normally be necessary if the employee were performing work duties, or may be major, such as an employee infected with COVID-19, perhaps even unknowingly, reporting to work to vote in the election. The Board's manual election procedures do not contain an absentee or remote voting option; an employee must appear in person at the polls to vote. Additionally, conducting manual elections under the current circumstances could disenfranchise voters, as employees may be wary of participating in an election process involving the degree of interaction required to conduct a manual election and may therefore refrain from participation.

Since the Employer prefers a manual election, I do not take my determination to conduct a mail ballot election lightly. I do not find that a manual election is impossible, or that a mail ballot election is the only appropriate option. However, I have determined that, under the current circumstances, conducting a mail ballot election is the most responsible and appropriate method of holding an election without undue delay. In fact, directing a mail ballot election is consistent with current CDC guidance on elections, which acknowledges the inherent risk of in-person elections and, thus, encourages mail-in methods of voting if allowed during this extraordinary COVID-19 pandemic.

In sum, in accordance with the Board's duty under Section 9(a) of the Act to conduct secret ballot elections to determine employees' union representation preference, I am directing an election in this matter as soon as practicable. To ensure the safety of all participants, to avoid the potential for disenfranchisement of employees, and to ensure compliance with this Agency's obligations and responsibilities, I am directing a mail ballot election. A mail ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in a safe, responsible, and effective manner.

V. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The parties stipulated and I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁷
2. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. The parties stipulated and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated and I find the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time production, fabrication, maintenance, and facilities maintenance employees employed directly by the Employer at its Anaconda, Montana facility.

Excluded: All other employees, employees supplied by temporary staffing agencies, employees supplied through the Job Corp Program, professional employees, clerical employees, managers, and guards and supervisors as defined by the Act.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 18 employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to

¹⁷ The Employer, a State of Montana limited liability company, with a place of business in Anaconda, Montana, is engaged in the business of manufacturing various commercial and military transportation equipment. In the past twelve months, a representative period, the Employer has purchased and received goods valued in excess of \$50,000 directly from points outside the State of Montana and received gross revenues in excess of \$500,000. Accordingly, the Employer is engaged in commerce within the meaning of the Act and is subject to the jurisdiction of the Board.

be represented for purposes of collective bargaining by **INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LODGE 88, AFL-CIO.**

A. Election Details

I have determined that a mail ballot election will be held for the reasons I have explained above.

The ballots will be mailed by U.S. Mail to eligible voters employed in the appropriate collective-bargaining unit. On **Friday, May 29, 2020**, ballots will be mailed to voters by an agent of Region 19 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, June 5, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 19 Office at (206) 220-6300 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 19 office by **12:00 p.m. (noon) PST on Friday, June 19, 2020**. All ballots will be commingled and counted by an agent of Region 19 of the National Labor Relations Board on **Wednesday, June 24, at 1:00 p.m.**, likely via a videoconference to be arranged by Region 19. In order to be valid and counted, the returned ballots must be received at the Region 19 Office by **12:00 p.m. (noon) PST Friday June 19, 2020**. Per the parties' stipulation, no ballots will be counted that are received after the due date. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending **Saturday, May 9, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are present in the United States may vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this Decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Thursday, May 21, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this Decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.** For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

2101 LLC d/b/a Intercontinental Truck
Body
Case 19-RC-258144

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Seattle, Washington this 19th day of May 2020.

RONALD K. HOOKS

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
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Seattle, WA 98174-1006